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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,670	05/24/2001	Tetsuo Nishimoto	393032025300	3831

25224 7590 07/13/2006
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EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
2837	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,670

Applicant(s)

NISHIMOTO ET AL.

Examiner

Marlon T. Fletcher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-10, 13-27, 30 and 33-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 7-10, 19, 20, 23 and 24 is/are allowed.
- 6) ☒ Claim(s) 13-18, 21, 22, 25-27, 30 and 33-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-18, 21-22, 25-27, 30, and 33-43, are rejected under 35 U.S.C. 103(a) as being unpatentable over Toriumi (6,062,868) in view of Hasegawa (6,570,080).

Toriumi discloses an apparatus and method for transmission and reception of music data as well as image data, wherein the music data includes melody data (which is made up of a chord progression) as seen in figure 1. Music data and image data are transmitted to a server (33 and 32 respectively) wherein the server includes a receiver for receiving the data. The server imparts additional data into the music data as well as the video data as discussed in column 5, lines 1-40. The additional data is a parameter. New content data is created by the additional data, wherein the addition provides a conversion. Figures 1-3 provide views of the apparatus and operation. As seen in figures 1-4 and discussed in the abstract, Toriumi discloses the input melody applied to the server, wherein the melody data and music information for producing music are both transmitted to a receiver.

Although, it is inherent that there is bi-directional communication between the client and server, the reference does not use the word "client."

However, Hasegawa et al. discloses a client terminal coupled to a server over a

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bi-directional communication network, the client terminal (2) comprising'. an input device for inputting melody including content data (column 5, lines 7-26)*, a transmitter (figure 9A) operatively coupled with the input to transmit the melody information to the server and a receiver adapted to receive content information from the server and melody information transmitted to the transmitter (column 14, lines 63 through column 15, line 63). Hasegawa clearly discloses in the abstract that user and server are connected through a network, wherein the server supplies music performance information and music sound information. Melody (chord progression) is inputted into the apparatus. Melody is a series of notes or note data or cord progression.

Official Notice is taken with respect to it being well known in the art that melody can be made up of chord progression.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings Hasegawa et al. (6,570,080) with the apparatus of Toriumi, because the combination clearly provides transmission of melody data between a client and a server, wherein Toriumi fudher provides data added to the transmission, wherein music information to reproduce is transmitted along with the melody information.

Allowable Subject Matter

3. Claims 1-4, 7-10, 19-20, and 23-24, are allowed.

Response to Arguments

4. Applicant's arguments filed 04/24/2006 have been fully considered but they are not persuasive.

The applicant amends the claims to include the limitation chord progression which is input and transmitted over the network. It well known that melodies are and can be made up of chord progression. Therefore, the amended does not necessarily change the context of the claim limitations. The claims are interpreted in the broadest sense of the language. A substantial amount of the claims are now allowed. However, the rejected claims do not appear to define over the prior art.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MTF
July 9, 2006


Marlon T. Fletcher
Primary Examiner